

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

MICA M. MORGAN, <i>et al.</i>)	
)	
)	
v.)	Civil Action No. 3:14-cv-00695(REP)
)	
MCCABE WEISBERG & CONWAY, LLC,)	
)	
Defendant.)	

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF CONSENT MOTION TO EXTEND THE
DEADLINES SET FORTH IN THE ORDER PRELIMINARILY
APPROVING THE CLASS ACTION SETTLEMENT**

Plaintiffs, with the consent of the Defendant, have moved for an order extending the deadlines set forth in the Order preliminarily approving the class action settlement in this case. (Doc. 51). The Settlement Administrator mailed out the court-approved class notices to all 4850 class members on July 8, 2015. The date for any class member to object to or opt-out of the class settlement was to be September 9, 2015. As of September 9, 2015, the deadline for opt-outs and objections, a total of 1108 notices have been returned as undeliverable with no forwarding addresses, which is a 77% presumed delivery rate.¹ Class Counsel requested that the Settlement Administrator perform a skip trace to determine whether additional updated addresses could be identified. The Settlement Administrator was able to identify new addresses for all 1108 class members who have not yet received a notice. Although a 77% delivery rate is within the range of delivery rates that have been approved by the court, it is at the low end, especially for a relatively small class of individuals. Because the Settlement Administrator has been able to locate updated addresses, it is in the best interest of the absent class members to extend the deadlines so that notices can be re-mailed

¹ A total of 19 additional notices were returned with expired forwarding orders, which the Class Administrator immediately re-mailed and which were not returned.

to those class members. In order to accommodate a new notice period, Class Counsel requests an additional 35 days from the date of any order the court may deem just and proper to grant extending the deadlines and resetting the fairness hearing. An additional 35 days would provide the minimum time necessary to reprint and mail the notices with new deadlines for opt-outs and objections as well as the date of the fairness hearing. Class Counsel has obtained an estimate for the cost of the skip trace, re-printing and re-mailing, which is under \$2,000.00.

As this Court explained, “[w]hat amounts to reasonable efforts under the circumstances is for the Court to determine after examining the available information and possible identification methods . . . ‘In every case, reasonableness is a function of [the] anticipated results, costs, and amount involved.’” *Fisher v. Va. Elec. & Power Co.*, 217 F.R.D. 201, 227 (E.D. Va. 2003) (citations omitted). The Supreme Court has concluded that direct notice satisfies due process, *Phillips Petrol. Co. v. Shutts*, 472 U.S. 797, 812-13 (1985), and other courts – including this court and others within the Fourth Circuit – have approved mailed-notice programs that effectively reached a similar, but larger, percentage of class members than the class notice reached in this case. *See In re Serzone*, 231 F.R.D. 221, 236 (S.D. W. Va. 2005) (approving notice program where direct mail portion was estimated to have reached 80% of class members); *Martin v. United Auto Credit Corp.*, 3:05cv00143 (E.D. Va. Aug. 29, 2006) (Final Order approving class notice with approximately 85% delivery).

The relatively low cost and short extension of time to re-mail notices to the absent class members is reasonable under the circumstances and should be granted.

Respectfully submitted,

MICA M. MORGAN & GERALD VAIDEN, JR.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September, 2015, I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification to the following:

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